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**File No.** O. Motors/48

Legal **DEPARTMENT**

A **BRANCH**

**Subject:—**

Opinions under the Motor Vehicles Act, 1939.

P-29

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**File No.** O. Motors/48

Std. Sects. Slip 14 15 a.

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# CONTENTS

## Legal Department File No. O.Motors/48.


| Sr. No. | R.I.No./O.No. | Subject | Pages. |
|---|---|---|---|
| | | Opinions under the Motor Vehicles Act, 1939. | |
| 1. | 3481<br>10.4.48. | Sec.21(2) (i)<br>Rule 20 of Bombay M.Vehicles Rules 1940.<br>Re: Instructions to schools of Motoring. | 1-2. |
| 2. | 4136<br>28.4.48. | Sec.45.<br>Re: Application for permit to run buses on the Nasik, Ahmednagar Via Sangamner route. | 3-6. |
| 3. | 5190<br>2.6.48. | Secs.42(1), 59(1) and 61.<br>Questions 1). Whether a permit holder has a right to alienate, mortgage or sell his permit and in case he does so whether the ~~xxxxxx~~ court has a right to uphold his action; and<br>2). whether Govt. can go in appeal against the decision of the civil court under the Acts. | 7-8. |
| 4. | 5283<br>3.6.48. | Questions whether in the absence of any provision in the M.V.Act or the Rules, it would be legal to charge fees for reservations of seats in passanger buses. | 9-10. |
| 5. | 5590<br>16-6-48. | Re: Registration of Motor Vehicles used solely upon premises of owner.<br>ss. 2(18) & 22(1) | 11-12. |
| 6. | 6460<br>9.7.48. | Question whether it is competent for Govt. to amend rule 28(8) of the Bombay M.V.Rules 1940 so as to enable Govt. to obtain registration marks assigned to their Vehicles from the Registering Authority free of cost.<br>2).Whether the view that all motor Vehicles owned by or on behalf of the Central or Provincial Govt. are exempt under section 94(2) of the Act and that a Notification of exemption i necessary only in respect of Vehicles belonging to a local authority is correct. | 13-16. |

CONTENTS.

Legal Department File No....

| Sr. No. | R.I.No./O.No. | Subject | Pages. |
|---|---|---|---|
| 7. | 7066<br>28-7-48. | Sec.43(1) (iii) and (iv)<br>Re: cancellation of permit<br>(Pl.also see R.L.A's No.12295 dated 3-11-49). | 17-18. |
| 8. | 7500<br>28-7-48. | Rules 75 and 76 of the B.M.Vehicles Rules 1940.<br>Question whether there is a second appeal to Govt. against R.T.Authority's decision by a committee of 2 members of the P.T.A. | 19-22. |
| 9. | 7334<br>5.8.48 | sec.128(2)<br>Question whether non-payment of the tax under the Bombay M.V.Act, 1939 is an offence under the Act. | 23-24. |
| 10. | 9283<br>1-10-48. | Sec.94(1) and (2)<br>Question whether the accident in question comes within the purview of 'third party risk' under the Insurance policy of the truck and whether the levies of the deceased are entitled to any compensation on this account. | 25-28. |
| 11. | 11857<br>14.12.48. | sec. 48(d)<br>Re: Cancellation of permit for excise offences. | 29-30. |

S.I./19.5.56. 5c.

Instructions to schools of motoring.

Motor Vehicles Act, 1939 - section 21(2)(1) and Motor Vehicles Rules, 1940 - rule 20.

Under sub-rule (2) of rule 20 of the Motor Vehicles Rules, 1940, the licensing authority has power to refuse approval to the setting up of a school of motoring only on the ground that there are sufficient schools in existence in the area. It is true that under sub-rule (5) of the said rule 20, the licensing authority has power to withdraw his approval for reasons to be intimated in writing. But this power cannot be used for breach of any condition which are not recognised by the Act or the rules made thereunder. The proposed executive instructions would have no legal authority and would not be binding on any school of motoring. Neither sub-rule (1) nor any other sub-rule of rule 20 nor Form M.S. empowers the licensing authority to impose any additional conditions, and Rule 20 will have to be suitable amended if the proposed instructions are to be made binding on the schools of motoring.

2. Condition (11) suggested at p.4 ante is intra vires section 21(2) (1) of the Motor Vehicles Act, 1939, There is no question of Government imposing any fees. On the lines of sub-rule (6) of rule 20 a provision could be made that the rate of fees shall be subject to the approval of the licensing authority and shall not be varied without its prior permission.

P.M.Ind/9/4.

Remembrancer of Legal Affairs.

U.R. to H.D. No.3481, dated the 10th April 1948.

S.I./17.5.56. 4c.

2. In disposal of the petition of Rao Saheb Mohanlal Chimanlal of Poona requesting Government to allow him to run buses on the Nasik Ahmednagar Via Sangamner route the Regional Transport Officer, Nasik appears to have replied as follows:-

> "Under the provisions of section 45 of the Motor Vehicles Act an application for a permit is to be made to the Regional Transport Authority of the region in which the applicant resides or has his principal place of business. Rao Saheb Mohanlal is a resident of the Poona region and as such he has no claim for a route which is entirely lying in this North Deccan region."

This is one of the reasons given by him in his report (on p.227 ante) for not granting permit on the Nasik-Ahmednagar route to the Rao Saheb.

H.D. considers that under the said section 45 it is not necessary that the applicant should necessarily be a resident of or have a place of business in the region where he intends to ply his buses; and has referred the papers to the R.L.A. for advice.

H.D. has correctly ~~wrongly~~ interpreted the provisions of section 45 of the Motor Vehicles Act, 1939 and no further elucidation appears necessary.

Reply may be:-

Seen and returned. The view taken by H.D. is correct.

R.T.K./23/4.

R.L.A. - P.M.Lad/27/4.

U.R. to H.D. No.4136, dated 28-4-48.

S.I./17.5.56.4c.

Re: transfer of permit and powers of Civil Court vis-a-vis. Transport authorities.

Motor Vehicles Act, 1939.

In view of the points raised by the Secretary, Provincial Transport Authority, in his letter at p.19, the Home Department has raised the following two specific questions for R.L.A's opinion:-

(1) Whether a permit holder has a right to alienate, mortgage or sell his permit, and in case he does so, whether the Court has a right to uphold his action; and

(2) Whether Government can go in appeal against the decision of the Civil Court under the Motor Vehicles Act.

Under section 42(1) of the Motor Vehicles Act, 1939, no owner of a transport vehicle shall use or permit the use of the vehicle in any public place, save in accordance with the conditions of a permit granted or countersigned by a Regional or Provincial Transport Authority authorising the use of the vehicle in that place in the manner in which the vehicle is being used. Under section 59(1) save as provided in section 61, a permit shall not be transferable from one person to another except with the permission of the transport authority which granted the permit and shall not without such permission operate to confer on any person to whom a vehicle covered by the permit is transferred any right to use that vehicle in the manner authorised by the permit. It is abundantly clear from this provision that the question of mortgaging a permit shall in no case arise. A permit can be transferred, be it with or without consideration, only if the permission of the Transport authority which granted the permit is obtained. It is, therefore, clea that a permit holder cannot as of right claim any power to transfer his permit. If, however, a permit holder transfers his permit without the permission of the Transport authority, which granted the permit, such transfer would be unlawful and the use of the vehicle by the transferee would be in contravention of section 42(1). Since the right to permit the transfer vests in the Transport authority, the Civil Court will

have no right to adjudicate the question whether permission was or was not lawfully withheld by the Transport authority. If any such question is taken to a Court of law and Government is not made a party thereto any adverse decision given by the Civil Court would not be binding on the Transport authority and can be safely ignored. If, however, Government is made a party, it would be open to Government to go in appeal. All these are academic questions which need no consideration at this stage unless a concrete instance had arisen. The case quoted by the Secretary of the Provincial Transport Authority has no bearing on the present question. In that case the permit was granted to the Firm known as 'Vasant Motor Service'. Since the firm was dissolved by the efflux of time, the question arose which of the partners of the firm were entitled to operate. There was no question of any transfer of permit. It related to the ownership of the permit and that question being sub-judice, the R.L.A. advised that the decision of the Civil Court should be awaited. Consequently, the general question raised by the Provincial Transport Authority does not arise on the basis of that case.

P.M.Iad/1/6/48.

Remembrancer of Legal Affairs.

U.R. to H.D. No.5190, dated the 2nd June 1948.

S.I./17.5.56. 4c.

The question referred to the R.L.A. for opinion is whether, in the absence of any provision in the Motor Vehicles Act or the Rules, it would be legal to charge fees for reservation of seats in passenger buses.

2. In order to make effective the system of reservation of seats, it is not only necessary to charge fees for reservation, but also to guarantee a seat to the person reserving it. Such guarantee can be enforced in practice only if other persons are prohibited from occupying a reserved seat, and can published for infringing the prohibition. A similar difficulty was experienced by the Railway Administration after the decisio of Emperor v. Sirdar Mohammad Aurangzebkhan, 44 Bombay Law Reporter, p.916; and now a new rule has been added to the general rules framed under section 47 of the Railways Act to the following effect:-

> "A Railway administration may reserve a seat, a berth, compartment of carriage, as the case may be, in a passenger train in accordance with conditions published in the Time Tables in force from time to time, and no person or persons other than for whom the accommodation is so reserved shall occupy such accommodation except with the permission of a railway servant as may be appointed in this behalf by the authorized officer."

It is to be noted that section 47(2) enacts that the rules may provide that any person committing a breach of any of them shall be punished.

3. In my opinion, therefore, it would be advisable to insert in the Motor Vehicles Act a provision for making rules for the accommodation and convenience of passengers and for penalty for the breach of such rules. After such provision is made, a rule on the lines above quoted can be framed with a view to making reservation effective.

P.M.Iad/2/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No.5283, dated 3-6-1948.

S.I./17.5.56. 4c.

Registration of Motor Vehicle used solely upon premises of owner

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Motor Vehicles Act, 1939.

Ss.2(18) & 22(1)

In para 1 of its office note at p.3 ante H.D. observes :-

> "Section 22(1) of the Motor Vehicles Act forbids driving of a motor vehicle in any public place or in any other place for the purpose of carrying passengers or goods unless the vehicle is registered. The words "or in any other place" occuring in this section seem to contemplate registration of motor vehicles even, if they are exclusively used on private premises. Section2, clause 18 of the Act which defines the term 'motor vehicle' does not, however, cover a vehicle used solely upon the premises of the owner and therefore, the provisions of this section would appear to conflict with those of section 22(1)".

The R.L.A. is requested to advice whether the legal position stated in para 1 of H.D. office note is correct.

2. The view taken by H.D. in para 1 of its office note is not quite correct. There is no conflict between section 2, clause 18 and section 22(1) of the Motor Vehicles Act. The definition of a motor vehicle in section 2, clause 18 will have to be imported into section 22(1). Consequently the motor vehicle which is used solely upon the premises of the owner requires no registration under section 22(1). The words "in any other place" in section 22(1) would no doubt mean any place which is not a public place, that is to say, a private place; but since a motor vehicle which is used solely upon premises of the owner requires no registration, the words "any other place" will have to be interpreted as meaning a private place other than the premises of the owner of the motor vehicle. It is, therefore, apparent that section 22(1) would in no way conflict with section 2. clause 18.

P.M.Lad/15/6.

Remembrancer of Legal Affairs.

U.R. to H.D. No.5590, dated 16th June 1948.

S.I./17.5.56. 4c.

The questions raised for the consideration of the Remembrancer of Legal Affairs are:-

(1) Whether it is competent for Government to amend rule 28(8) of the Bombay Motor Vehicles Rules, 1940, so as to enable Government to obtain registration marks assigned to their vehicles from the Registering Authority free of cost;

(2) Whether the view expressed in para 3 of Home Department note that all motor vehicles owned by or on behalf of the Central or Provincial Government are exempt under section 94(2) of the Motor Vehicles Act and that a Notification of exemption is necessary only in respect vehicles belonging to a local authority, is correct.

2. Under section 41(2) (f) of the Indian Motor Vehicles Act, 1939 rules can be made prescribing the fees to be charged for the issue of certificate of registration. Separate fees can also be charged for the registration marks. Under section 41(2) (ff) rules can be made for the exemption of specified persons from the payment of such fees. The registration fee is prescribed in rule 34 of the Bombay Motor Vehicles Rules, 1940. It appears from sub-rule (3) of that rule that this fee includes the fee for assignment of the registration mark. Section 24(1) provides for the assignment of the registration mark and there is no provision in the Act for issue of a plate bearing such mark. It is rule 28(8) which provides for the issue of the plate on payment of the cost. As the rule does not prescribe any fees it appears that section 41(2) (ff)

would have no application, if Government vehicles are to be exempted from this provision. However under the general rule making power conferred by section 41(1) under which rule 28(8) seems to have been made such exemption could be granted and a proviso some what on the following lines may be added to rule 28(8), namely:-

"Provided that in the case of a vehicle owned by or on behalf of Government it shall not be obligatory to purchase the plate from the Registering Authority if a plate bearing the registration mark assigned by the authority and otherwise complying with the provisions of this rule is produced by the person in charge of the vehicle before the authority at the time of registration and is approved by the authority. Such plate shall be deemed to have been issued by the Registering Authori y."

3. The view taken by Home Department in para 3 of its note at pages 3-4 ante on the second question is correct.

P.H.Iad/9/7.
Remembrancer of Legal Affairs.

U.O.R. to H.D. No.6460, dated the 9th July 1948.

S.I./17.5.56. 4c.

Cancellation of permit.

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Motor Vehicles Act,1939. Sec.43(1) (iii) and (iv).

The first proviso to clause (iii) read with clausd(iv) of section 43(1) of the Motor Vehicles Act, 1939, imposes restrictions on Government's exercise of power vested under clause(iii); and one of those restrictions is that Government must declare that it will engage in the business of road transport service either generally or in any area specified in the notification. This restriction clearly implies that a permit can be cancelled under clause(iii) only when Government desires to engage in the business of transport service. Clause (iii) cannot therefore be invoked for the purpose of enabling the Sholapur Municipality to operate a bus service within the municipal area before the expiry of the permit granted to Mr.A.M.Khan.

P.M.Iad/27/7.

Remembrancer of Legal Affairs.

U.R. to H.D. No.7066, dated the 28th July 1948.

(Please see R.L.A's opinion No.12395, dated 3.11.49

S.I./17.5.56. 40.

Question whether there is a second appeal to Government against the order made in appeal against Regional Transport Authority and decision by a committee of 2 members of P.T.A. Indian Motor Vehicle Act, 1939 - Rules 75, 76.

The following questions are raised for the deration of the R.L.A. :-

(a) Whether, in terms of rule 75, an appeal lies to the Provincial Government against an order made in appeal against the Regional Transport Authority's decision by a Committee of 2 members of the Provincial Transport Authority; and

(b) whether the Provincial Transport Authority, as a whole, can revise an appellate order made by a committee of 2 of its members.

2. Rule 75 of the Bombay Motor Vehicles Rules, 1940 provides that the authority to decide an appeal against the orders of the Provincial Transport Authority in respect of matters dealt with in clauses (a), (b), (c) (d), (e) and (f) of section 64 of the Act shall be the Provincial Government etc. Rule 76(1) provides that th authority to decide an appeal against the orders of a Regional Transport Authority under the same clauses sh shall be a Committee of such numbers of members of the Provincial Transport Authority, not being less than two as may be appointed by the Chairman etc. It is clear from these provisions read together that the appellate authority to decide an appeal against the order of the Regional Transport Authority is the "Committee" and that against the order of the Provincial Transport Authority is the Provincial Government. The words "against the orders of the Provincial Transport Authority" in rule 75 does not include orders passed in appeal by the "Committee" under rule 76 because as pointed out in R.L.A's opinion No.3417, dat 21st April 1942, the Committee, being an authority prescribed by rule 76 read with section 64, would not be a Provincial Transport Authority constituted under section 44(1). Consequently the reply to the first question is in the negative.

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As regards the second question, in the absence of any provision either in the Act or in the rules made thereinder empowering the Provincial Transport Authority to revise orders passed by the Committee, the Provincial Transport Authority cannot exercise revisional powers for jurisdiction by way of appeal or revision cannot be inferred but must be expressly given. (Emperor Vs.Usman Haji 54 Bom.664 at p.666).

P.M.Lad/6/8.
Remembrancer of Legal Affairs.

U.R. to H.D. No.7500 dated the 9th August, 1948.

S.I./17.5.56. 4c.

Office of the R.L.A.

Non-Payment of Tax under the Motor Vehicle Tax Act, 1939.

Non-payment of the tax under the Bombay Motor Vehicles Tax Act, 1935 is not an offence under the Motor Vehicles Act, 1939. Consequently clause (b) of section 128 (2) of the Motor Vehicles Act, whereunder the Provincial Transport Officer proposes action will have no application.

P.M.Lad/4/8.

Remembrancer of Legal Affairs.

U.R. to H.D., No.7384, dated the 6th August 1948.

S.I./17.5.56. 4c.

Office of the R.L.A.

Motor Vehicles Act, 1939, section 94. Accident to third party.

Sub-clause (1) of section 94 of the Motor Vehicles Act, 1939, provides that no person shall use etc. a motor-vehicle in a public place unless there is in force in relation to the use of the vehicle by that person a policy of insurance complying with the requirements of this Chapter. Under sub-section (2) subject to any prescribed conditions sub-section (1) shall not apply to any vehicle owned by any of the authorities mentioned in clauses (i) to (viii) and one of those authorities is any Provincial Government Under rule 12 of the Motor Vehicles (Third Party Insurance) Rules, 1946, in the case of a motor vehicle owned by any of the authorities specified in sub-section (2) of section 94 of the Act, a certificate in Form C set out in the Schedule to these rules signed by a person authorised on that behalf by such authority may be produced in evidence that the motor vehicle is not being driven in contravention of section 94 of the Act. Reading these provisions together it is clear that a certificate issued in Form C is merely a proof that the vehicle belongs to an authority specified in sub-section (2) of section 94 and is thus exempt from the third party risk insurance. The issue of such a certificat does not mean that the authority thus exempted has undertaken the third party risk. Consequently the fact that a certificate in Form C. has been issued in the present case imposes no obligation on Government of a third party risk. This does not mean that Government would not in any way be liable for the death or ~~ex~~ injury caused to a third party while the vehicle is being driven in a public place. Such liability would

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~~Civil Writ No. 50 &c.~~

however arise only under the ordinary law viz. tort. To substantiate such claim what is necessary is that there must be some negligence as a result of which the third party must have suffered injury or death. In the present case there is absolutely no evidence to prove any negligence in causing the death of Yallappa. The victim Yallappa met his death as a result of a mis-fire and the burning petrol from the jar falling on him. This is purely a case of accident. There being no wrongful act, neglect or default whereby the death of the victim has been caused, the Fatal Accidents Act, 1855, will have no application and the heirs of Yallappa will have no legal claim against Government for damages. Since, however, the victim met his death while he was trying to repair the Government truck, it appears desirable that Government should pay some compensation ex gratia to the heirs of Yallappa.

P.M.Lad/30/9.

Remembrancer of Legal Affairs.

U.R. to P.W.D., No.9283 dated 1st October 1948.

S.I./17.5.56. 4c.

Office of the R.L.A.

Cancellation of permit for excise offences.

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Motor Vehicles Act, 1939, Sec.48(d).

Power to impose conditions on stage carriage permits is given by section 48. Under clause (d) of this section a Regional Transport Authority is empowered to attach to a stage carriage permit any prescribed condition or any one or more of the six conditions specified therein. "Prescribed" means prescribed by rules made under the Act. It is hence obvious that before the proposed condition can be attached to the permit it will have to be prescribed by the Rules. The view taken by the Deputy Secretary Home Department, is correct.

P.M.Lad/14/12

Remembrancer of Legal Affairs.

U.R. to H.D., No. 11857, dated the 14th December 1948.

S.I./17.5.56. 4c.